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7 VERITY, INC., and THE VERITY INC.
CHANGE IN CONTROL AND
SEVERANCE BENEFIT PLAN

8

9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 HUGO SLUIMER

12 CASE NO. CV 08-1220 SI

13 Plaintiff,

14 **DEFENDANTS' OBJECTIONS TO**
15 **DECLARATION OF JACOB VAN DER**
16 **PIJL**

17 vs.

18 Date: July 18, 2008
19 Time: 9:00 a.m.
Ctrm: 10, 19th Floor

20 VERITY, INC., a corporation, and THE
21 VERITY INC. CHANGE IN CONTROL AND
22 SEVERANCE BENEFIT PLAN,

23 Defendants.

1 Defendants hereby object to the declaration of Jacob Van Der Pijl as follows:

2

3 1. "On or about April 18, 2006, I filed a
4 petition on Mr. Sluimer's behalf in the Dutch
5 Court. Attached hereto as Exhibit A is a true
6 and correct copy of that petition and the other
7 documents that were presented to the Court by
8 Mr. Sluimer and Verity in that action."
9 (Van Der Pijl Decl., p. ii, lines 8-10.)

10 Relevance. Fed. R. Evid. 402; *Abatie v. Alta*
11 *Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th
12 Cir. 2006) ("Many circuits limit a district
13 court to the administrative record when the
14 court is reviewing a case on the merits for an
15 abuse of discretion; consideration of new
16 evidence is permitted only in conjunction with
17 de novo review of a denial of benefits.");
18 *Jebian v. Hewlett-Packard Co. Employee*
19 *Benefits Org. Income Prot. Plan*, 349 F.3d
20 1098, 1110 (9th Cir.2003); *Urbania v. Cent.*
21 *States, Se. & Sw. Areas Pension Fund*, 421
22 F.3d 580, 586 (7th Cir.2005) (noting that
23 "[d]eferential review of an administrative
24 decision means review on the administrative
25 record" (internal quotation marks omitted));
26 *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163,
27 173 (2d Cir.2001) (noting that when review is
for abuse of discretion, the record consists of
the administrative record); *Elliott v. Sara Lee*
28 *Corp.*, 190 F.3d 601, 608 & n. 6 (4th
Cir.1999) (abuse of discretion review must be
based on the evidence before the
administrator); *Buckley v. Metro. Life*, 115
F.3d 936, 941 & n. 2 (11th Cir.1997) (per

1 2 3	curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).
4 2. "Attached hereto as Exhibit B are true and 5 correct copies of 2005 organization charts for 6 Mr. Sluimer's position with Verity and Mr. 7 Sluimer's business card that was presented to 8 the Court at the 30 May 2006 hearing in the 9 Dutch Court." 10 (Van Der Pijl Decl., p. ii, lines 11-13.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Improper authentication. Fed. R. Evid. 901. Relevance. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i> , 458 F.3d 955, 963 (9 th Cir. 2006) ("Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits."); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org. Income Prot. Plan</i> , 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i> , 421 F.3d 580, 586 (7th Cir.2005) (noting that "[d]eferential review of an administrative decision means review on the administrative record" (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i> , 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i> , 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the administrator); <i>Buckley v. Metro. Life</i> , 115

1 2 3 4	F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).
5 3. “Attached hereto as Exhibit C is a true 6 and correct copy of the Clerk’s handwritten 7 notes from the May 30, 2006 hearing in the 8 Dutch Court.” 9 (Van Der Pijl Decl., p. ii, lines 14-15.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Improper authentication. Fed. R. Evid. 901. Relevance. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i> , 458 F.3d 955, 963 (9 th Cir. 2006) (“Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits.”); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org. Income Prot. Plan</i> , 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i> , 421 F.3d 580, 586 (7th Cir.2005) (noting that “[d]eferential review of an administrative decision means review on the administrative record” (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i> , 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i> , 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the

1 2 3 4 5	administrator); <i>Buckley v. Metro. Life</i> , 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).
6 4. “Attached hereto as Exhibit D is a true 7 and correct copy of Order issued by the Dutch 8 Court on June 7, 2006.” 9 (Van Der Pijl Decl., p. ii, lines 16-17.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Improper authentication. Fed. R. Evid. 901. Relevance. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i> , 458 F.3d 955, 963 (9 th Cir. 2006) (“Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits.”); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org. Income Prot. Plan</i> , 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i> , 421 F.3d 580, 586 (7th Cir.2005) (noting that “[d]eferential review of an administrative decision means review on the administrative record” (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i> , 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i> , 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be

	based on the evidence before the administrator); <i>Buckley v. Metro. Life</i> , 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).
5. “Both Mr. Sluimer and Andrew Kanter attended and were present for the entire May 30, 2006 hearing in the Dutch Court. Mr. Kanter appeared as Verity, Inc.’s representative and answered the Court’s questions on behalf of Verity.” (Van Der Pijl Decl., p. ii, lines 18-20.)	Irrelevant. Fed. R. Evid. 402. Lacks personal knowledge. Fed. R. Evid. 602. Improper legal conclusion. Fed. R. Evid. 701(b).
6. “During the May 30, 2006 hearing, the Court questioned Mr. Sluimer and Mr. Kanter regarding the nature of the two jobs and whether they were comparable.” (Van Der Pijl Decl., p. ii, lines 21-22.)	Hearsay. Fed. R. Evid. 802. Irrelevant. Fed. R. Evid. 402.
7. “Mr. Sluimer explained to the Court his job duties in both jobs and described why they were not comparable. Further, Mr. Sluimer explained that he suffered a lapse in pay.” (Van Der Pijl Decl., p. ii, lines 22-24.)	Hearsay. Fed. R. Evid. 802. Irrelevant. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i> , 458 F.3d 955, 963 (9 th Cir. 2006) (“Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits.”); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org.</i>

	<p><i>Income Prot. Plan</i>, 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i>, 421 F.3d 580, 586 (7th Cir.2005) (noting that “[d]eferential review of an administrative decision means review on the administrative record” (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i>, 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i>, 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the administrator); <i>Buckley v. Metro. Life</i>, 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).</p>
<p>19 8. “Mr. Kanter spoke in support of the 20 defendants’ arguments that they had offered 21 Mr. Sluimer a comparable alternative position 22 and that they were not required to pay Mr. 23 Sluimer any additional compensation because 24 they offered Mr. Sluimer immediate 25 reemployment.” 26 (Van Der Pijl Decl., p. ii, lines 24-27.)</p>	<p>Hearsay. Fed. R. Evid. 802. Irrelevant. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i>, 458 F.3d 955, 963 (9th Cir. 2006) (“Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits.”); <i>Jebian v. Hewlett-Packard Co. Employee Benefits Org.</i></p>

	<p><i>Income Prot. Plan</i>, 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i>, 421 F.3d 580, 586 (7th Cir.2005) (noting that “[d]eferential review of an administrative decision means review on the administrative record” (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i>, 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i>, 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the administrator); <i>Buckley v. Metro. Life</i>, 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).</p>
9. “Verity was provided with all written materials submitted to the Court by Mr. Sluimer, including materials describing how the two jobs were comparable.” (Van Der Pijl Decl., p. ii:28-iii:1.)	Lacks personal knowledge. Fed. R. Evid. 602. Irrelevant. Fed. R. Evid. 402; <i>Abatie v. Alta Health & Life Ins. Co.</i> , 458 F.3d 955, 963 (9 th Cir. 2006) (“Many circuits limit a district court to the administrative record when the court is reviewing a case on the merits for an abuse of discretion; consideration of new evidence is permitted only in conjunction with de novo review of a denial of benefits.”); <i>Jebian v. Hewlett-Packard Co. Employee</i>

	<p><i>Benefits Org. Income Prot. Plan</i>, 349 F.3d 1098, 1110 (9th Cir.2003); <i>Urbania v. Cent. States, Se. & Sw. Areas Pension Fund</i>, 421 F.3d 580, 586 (7th Cir.2005) (noting that “[d]eferential review of an administrative decision means review on the administrative record” (internal quotation marks omitted)); <i>Zervos v. Verizon N.Y., Inc.</i>, 252 F.3d 163, 173 (2d Cir.2001) (noting that when review is for abuse of discretion, the record consists of the administrative record); <i>Elliott v. Sara Lee Corp.</i>, 190 F.3d 601, 608 & n. 6 (4th Cir.1999) (abuse of discretion review must be based on the evidence before the administrator); <i>Buckley v. Metro. Life</i>, 115 F.3d 936, 941 & n. 2 (11th Cir.1997) (per curiam) (holding that extra-record evidence, presented to the district court on review for abuse of discretion, was irrelevant).</p>

1 de novo review of a denial of benefits.”);
 2 *Jebian v. Hewlett-Packard Co. Employee*
 3 *Benefits Org. Income Prot. Plan*, 349 F.3d
 4 1098, 1110 (9th Cir.2003); *Urbania v. Cent.*
 5 *States, Se. & Sw. Areas Pension Fund*, 421
 6 F.3d 580, 586 (7th Cir.2005) (noting that
 7 “[d]eferential review of an administrative
 8 decision means review on the administrative
 9 record” (internal quotation marks omitted));
 10 *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163,
 11 173 (2d Cir.2001) (noting that when review is
 12 for abuse of discretion, the record consists of
 13 the administrative record); *Elliott v. Sara Lee*
 14 *Corp.*, 190 F.3d 601, 608 & n. 6 (4th
 15 Cir.1999) (abuse of discretion review must be
 16 based on the evidence before the
 17 administrator); *Buckley v. Metro. Life*, 115
 18 F.3d 936, 941 & n. 2 (11th Cir.1997) (per
 19 curiam) (holding that extra-record evidence,
 20 presented to the district court on review for
 21 abuse of discretion, was irrelevant).

22 Dated: June 27, 2008

23 Respectfully submitted,

24 DOLL AMIR & ELEY

26 By /s/ Gregory L. Doll

27 Gregory L. Doll

28 Attorneys for Defendants VERITY, INC., and THE
 VERITY INC. CHANGE IN CONTROL AND
 SEVERANCE E BENEFIT PLAN

1 **PROOF OF SERVICE**
2

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**
4

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
6 not a party to the within action; my business address is 1888 Century Park East, Suite 1106, Los
7 Angeles, CA 90067.

8 On June 27, 2008, I served the foregoing document(s) described as **DEFENDANTS'**
9 **OBJECTIONS TO DECLARATION OF JACOB VAN DER PIJL** on the parties in this action by
10 serving:
11

12 Joseph M. Rimac, Esq.
13 William Reilly, Esq.
14 RIMAC & MARTIN
15 1051 Divisadero Street
16 San Francisco, CA 94115
17 F: (415) 561-8430

Cliff Palefsky, Esq.
Keith Ehrman, Esq.
McGuinn, Hillsman & Palesfsky
535 Pacific Avenue
San Francisco, CA 94133
F: (415) 403-0202

12 () **By Envelope** - by placing () the original () a true copy thereof enclosed in sealed envelopes
13 addressed as above and delivering such envelopes:
14

15 () **By Mail:** As follows: I am "readily familiar" with this firm's practice of collection and
16 processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal
17 service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary
course of business. I am aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing in
affidavit.

18 (X) **By Electronic Filing:** Based upon my training and experience with electronic filing in the
19 federal courts, it is my understanding that a copy of this Document, upon its submission to the
Court, will be electronically served on the addressees.
20

21 Executed on June 27, 2008, at Los Angeles, California.
22

23 () **STATE** I declare under penalty of perjury under the laws of the State of California that the above
24 is true and correct.
25

26 (X) **FEDERAL** I declare that I am employed in the office of a member of the bar of this court at
27 whose direction the service was made.
28

26 */s/ Susan Reimers* _____.
27 Susan Reimers
28